

RECEIVED**MAR 24 2023**

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

BY MAIL

UNITED STATES DISTRICT COURT	EASTERN DISTRICT OF MISSOURI DIVISION
Name (under which you were convicted): <u>JOSEPH MICHAEL ENGEL</u>	Docket or Case No.: _____
Place of Confinement: <u>OZARK CORRECTIONAL CENTER</u>	Prisoner No.: <u>1069055</u>
Petitioner: (include the name under which you were convicted): <u>JOSEPH MICHAEL ENGEL</u>	Respondent: (authorized person having custody of petitioner): <u>CYBELLE WEBBER</u>

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

23rd JUDICIAL CIRCUIT COURT, JEFFERSON COUNTY, MISSOURI

(b) Criminal docket or case number (if you know): 18JE-CR03639

2. (a) Date of the judgment of conviction (if you know): 9-01-2019

(b) Date of sentencing: 8-06-2020

3. Length of sentence: 10, 10, 10, 10, 7, 7, 7, 3, 9/2

4. In this case, were you convicted of more than one count or of more than one crime? Yes No

5. Identify all crimes which you were convicted and sentenced in this case: Burglary (2nd (2cts), Property Damage (1st) (2cts), Tampering Mtr. Veh. (2cts), Resisting Arrest

6. (a) What was your plea? (Check one)

(1) Not guilty

(3) Nolo contendere (no contest)

(2) Guilty

(4) Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge,

what did you plead guilty to and what did you plead not guilty to?

"Guilty" to All

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury

Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing? Yes

No

8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

(a) Name of court: N/A

(b) Docket or case number (if you know): N/A

(c) Result: N/A

(d) Date of result (if you know): N/A

(e) Citation to the case (if you know): N/A

(f) Grounds raised:
N/A

(g) Did you seek further review by a higher state court? Yes No
If yes, answer the following:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Result: N/A

(4) Date of result (if you know): N/A

(5) Citation to the case (if you know): N/A

(6) Grounds raised:
N/A

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes No
If yes, answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning the judgment of conviction in any state court? Yes No

11. If you answer to Question was "Yes," give the following information:

(a) (1) Name of court: JEFFERSON COUNTY 22-1 CRIM 1

(2) Docket or case number (if you know): 21JE-CC00031

(3) Date of filing (if you know): 12-23, 2020

(4) Nature of the proceeding: FURN-40

(5) Grounds raised: Ineffective Assistance of Counsel, Judicial Procedure
Due Process

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

(7) Result: DISMISSED

(8) Date of result (if you know): ? June 16, 2021

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: SUPREME COURT OF MISSOURI

(2) Docket or case number (if you know): SC99540

(3) Date of filing (if you know): EXX/XX/XX ? March, 22, 2022

(4) Nature of the proceeding: HABEAS CORPUS

(5) Grounds raised: Due Process, Criminal law statute/sentence structure,
Ineffective Assistance Counsel.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

(7) Result: DENIED (untimely)

(8) Date of result (if you know): 5-17-2022

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: UNITED STATES DISTRICT COURT, E.D.

(2) Docket or case number (if you know): 4:22-CV-00598-AGF

(3) Date of filing (if you know): 6-01-2022

(4) Nature of the proceeding: HABEAS CORPUS (§ 2254)

(5) Grounds raised: Due Process, Ineffective Assistance of Counsel,
Judicial Procedure, criminal law statute/sentence structure.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

(7) Result: DENIED (Untimely)

(8) Date of result (if you know): N/A

(d) Did you appeal to the highest state court having jurisdiction over the action on your petition, application, or motion?

(1) First petition: Yes No

(2) Second petition: Yes No

(3) Third petition: Yes No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

Second petition was filed in Missouri Supreme Court

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Timeliness of Petition

(a) Supporting facts. Do not argue or cite law. Just state the specific facts that support your claim:

Petitioner wishes to aver that his petition was timely under § 2254(d), in that his form-40 and subsequent filings were done after the revocation hearing, which is when the factual predicate of his claims were discovered.

(b) If you did not exhaust your state remedies on Ground One, explain why:

The court's configuration from sentencing date (and not execution) was not what petitioner intended, and he wishes to clarify timeliness.

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise the issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? Yes No

(4) Did you appeal from the denial of your motion or petition? Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise

this issue: *Petitioner's Mental Health and education is not competent to adequately understand the importance of procedural law.*

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

N/A

GROUND TWO: Ineffective Assistance of Counsel!

(a) Supporting facts. Do not argue or cite law. Just state the specific facts that support your claim:

Petitioner's attorneys misrepresented facts about the plea agreement, that had petitioner known, he would not have waived his 6th Amendment rights to trial by jury.

(b) If you did not exhaust your state remedies on Ground Two, explain why:

Exhausted, but denied due to the erroneous construction of the timeliness

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise the issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

Inadequately educated about procedural law.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Form - 40

Name and location of the court where the motion or petition was filed:

23rd Judicial Circuit, Jefferson County

Docket or case number (if you know): 21JE-CC00031

Date of court's decision: ?

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion or petition? Yes No

(4) Did you appeal from the denial of your motion or petition? Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: Unaware of procedural law.

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two:

Habeas Corpus - Missouri Supreme Court and U.S.D.C. E.D. Denial for timeliness issue.

GROUND THREE: Due Process of Law

(a) Supporting facts. Do not argue or cite law. Just state the specific facts that support your claim:

I, VI, XIV Amendments. The "misrepresentation" of the facts which caused him to part with VI Amendment rights are repugnant to the II and XIV Amendments!

(b) If you did not exhaust your state remedies on Ground Three, explain why:

Exhausted but denied due to the erroneous construction of timeliness.

(c) Direct Appeal of Ground Three:

N/A

(1) If you appealed from the judgment of conviction, did you raise the issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

Unaware of procedural law

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: FORM-40

Name and location of the court where the motion or petition was filed:

23rd Judicial Circuit, Jefferson County

Docket or case number (if you know): ZJTE-CC00031

Date of court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion or petition? Yes No

(4) Did you appeal from the denial of your motion or petition? Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: Unaware of procedural law

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

Habeas Corpus, Supreme Court of Missouri and

USDC E.D.
Denied as "untimely"

GROUND FOUR:

N/A

(a) Supporting facts. Do not argue or cite law. Just state the specific facts that support your claim:

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise the issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): _____

Date of court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? Yes No

(4) Did you appeal from the denial of your motion or petition? Yes No

(5) If your answer to Question (d)(4) is “Yes,” did you raise this issue in the appeal? Yes No

(6) If your answer to Question (d)(4) is “Yes,” state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): _____

Date of the court’s decision: _____

Result (attach a copy of the court’s opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is “No,” explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes No

If your answer is “No,” state which grounds have not been so presented and give your reason(s) for not presenting them:

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes No

If “Yes,” state the name and location of the court, the docket or case number, the type of proceeding, and

the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing

Michele Leah Whitehead

(b) At arraignment and plea:

Christopher Paul Huber
At trial:

(c) At trial:

(d) At sentencing.

Sara Quinn Zapren

(e) On appeal:

N/A

(f) In any post-conviction proceeding:

N/A

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

Jefferson County Circuit Court

(b) Give the date the other sentence was imposed:

2-10-2022

(c) Give the length of the other sentence:

5

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C § 2244(d) does not bar your

petition.* *Mental Health Issues PTSD/Anxiety/Depression
Head Trauma Lack of Knowledge of the Law.*

*The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. §

2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of-

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the court grant the following relief or any other relief to which petitioner may be

entitled: *Petitioner was seeking review directly after revocation, which is when he discovered the factual predicate of the claims.*

Although not entirely procedurally correct, Petitioner prays that

the court acknowledge this petition as timely

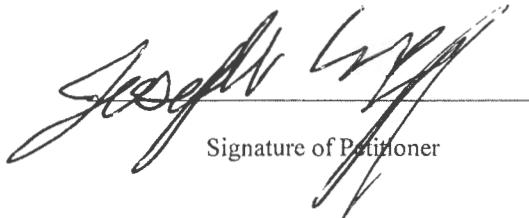
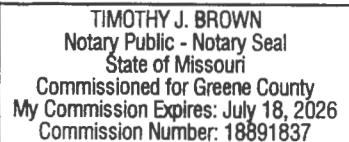
N/A

*under 2244(a), as the time was
(or should be considered as) "tolled"*

*while he was seeking relief in
the respective courts.*

Signature of Attorney (if any)

I declare (or certify, verify, or state) under the penalty of perjury that the foregoing is true and correct and that this petition for Writ of Habeas Corpus was placed in the prison mailing system on March 24, 23 (month, date, and year).



Signature of Petitioner

Executed (signed) on: March 14, 2023 (date)
March, 21, 23

Notary Timothy Brown 3/21/23

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition: